IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel, W. A. DREW EDMONDSON, in his capacity as ATTORNEY GENERAL OF THE STATE OF OKLAHOMA, and OKLAHOMA SECRETARY OF THE ENVIRONMENT C. MILES TOLBERT, in his capacity as the TRUSTEE FOR NATURAL RESOURCES FOR THE STATE OF OKLAHOMA,	
Plaintiff,	CASE NO. 05-CV-329-GKF- SAJ
V.	
TYSON FOODS, TYSON POULTRY, INC., TYSON CHICKEN, INC., COBB-VANTRESS, INC., AVIAGEN, INC., CAL-MAINE FOODS, INC., CAL-MAINE FARMS, INC., CARGILL, INC., CARGILL TURKEY PRODUCTS, LLC, GEORGE'S, INC., GEORGE'S FARMS, INC., PETERSON FARMS, INC., SIMMONS FOODS, INC AND WILLOWBROOK FOODS, INC.	§
Defendants.	

AFFIDAVIT OF LOWELL CANEDAY, Ph.D.

The undersigned, Lowell Caneday Ph.D., does solemnly swear and state:

1. As a professor in Leisure Studies (often alternately titled Recreation, Parks, and Tourism in other academic settings) at Oklahoma State University since 1981, I have authored 30 nationally or internationally refereed research articles, 24 state or regional articles, 66 technical research reports, and numerous other publications. In addition, I

EXHIBIT
2

have been the principal investigator or co-principal investigator on more than 50 funded research projects totaling $3.21 million. Most of these research projects and resulting publications have focused on the relationship between human recreational activity and recreational environments. It is well documented that recreational environments influence both the individual and the individual choice of activity, and human activity influences the recreational environment.

2. In addition to the academic experience related to the interface between humans and the environment in recreation settings, my educational background has emphasized this same linkage. I completed my Doctor of Philosophy (Ph.D.) at the University of Minnesota – Twin Cities in Recreation, Park and Leisure Studies in 1981. That degree followed a Master of Arts degree in Recreation and Park Administration from the University of Wyoming (1971) and a Bachelor of Arts in Mathematics from LeTourneau College (now LeTourneau University) in 1970.

3. Beyond the academic arena, my professional employment experience has encompassed the same relationships between human recreational activity and the natural environment. I worked as a seasonal park ranger with Minnesota State Parks, assigned primarily to Interstate State Park on the St. Croix River between Minnesota and Wisconsin. The St. Croix River is one of the original seven federally designated wild and scenic rivers, and remains a significant recreational resource with varying segments classified as "Wild", "Scenic", and "Recreational." The St. Croix River is an internationally known canoe river, readily accessible from population centers such as Minneapolis (MN), St. Paul (MN), and Madison (WI). In addition, I have worked with municipal park and recreation departments in Texas and Minnesota in settings in which human interaction with the environment was a major portion of my administrative responsibility.

4. Specific research I have completed includes: the Illinois River management plan (2000); multiple statewide comprehensive outdoor recreation plans; numerous recreation management plans for lake environments; extensive recreation visitor studies; and economic analyses of recreation-driven tourism. Agencies that have funded these research efforts include the United States Environmental Protection Agency, the National Science Foundation, the National Park Service, the U.S. Forest Service, the Army Corps of Engineers, Oklahoma Tourism and Recreation Department, and numerous communities. In return, these agencies have utilized that research in planning, development of policy, and in operation of the respective agencies.

5. In addition to the academic credentials, I am a Certified Park and Recreation Professional (CPRP), a status that requires on-going and continuous education and professional development. I am a Fellow of the American Leisure Academy and the American Academy of Park and Recreation Administrators.

6. Based on this experience and these qualifications, I have been retained by the Attorney General of the State of Oklahoma to provide information and documentation of recreational use in the Illinois River corridor.

7. For the purposes of definition, the Illinois River in Oklahoma is that stream distance and surrounding corridor from Lake Francis on the border between Oklahoma and Arkansas to Horseshoe Bend public access bays. Horseshoe Bend is the traditional demarcation between the riverine environment of the Illinois River and its tributaries and the lacustrine environment of Lake Tenkiller.

8. The Illinois River, its tributaries and the surrounding watershed of eastern Oklahoma, on the western edge of the Ozark Plateau, is a unique resource in Oklahoma. The Illinois River and its tributaries offer the only free-flowing canoe or recreational float streams permitting continuous floats of three hours or more in Oklahoma. With the

combination of adequate water flow to permit recreational floats, a watercourse without impoundment, a history of reasonably clear and clean water, supporting outfitters, public access and management, and the surrounding beauty of a natural watershed, the Illinois River, Flint Creek and Baron Fork Creek are the premier canoe resource in Oklahoma.

9. This premier recreational river system has established a strong economic base for Tahlequah, Oklahoma, and several smaller communities in the watershed. Tourism, generated by natural resource-based recreation, is an integral component of the economy for the watershed. Recreation visitors seeking float experiences are the principal source of revenue for outfitters, lodging, food service, and other hospitality services throughout the Illinois River corridor.

10. Comparable rivers in the south-central portion of the United States include portions of the Niobrara River in Nebraska (a National Wild and Scenic River), the Buffalo River (a National Recreational River) and the White River in Arkansas, and the Eleven Point River (a National Wild and Scenic River), the Black River, and the St. Francis River in Missouri. However, Oklahoma and its residents have no other in-state options to match the features provided by the Illinois River corridor. Much shorter sections of the Blue River and the Mountain Fork River offer opportunities for canoeing, but without the additional amenities and natural features of the Illinois River.

11. During the past four years (2003 – 2007), an average of 117,685 floaters visited the Illinois River for a recreational float; but may often wade and swim in the river and streams. Annually, another 37,870 visitors visit the Illinois River for a recreational experience, but do not float. The months of May through August produce slightly more than 90% of this visitation.

12. A recreational float typically involves a visit to one of the authorized outfitters working through the Oklahoma Scenic Rivers Commission. These outfitters provide

canoes, kayaks, and rafts or other inflatable floats to accommodate the floaters. Float trips vary in length of time and river miles, although most float experiences are about four hours in length. Some floats, with adequate water, may run the length of the floatable portion of the Illinois River and require multiple days on the river. A typical float includes a bus ride from the outfitter's location to an in-put location at a public access property along the Illinois River. The floater then floats, with occasionally paddling, to a take-out location downstream. Along the way, the floater typically swims at various deeper pools in the Illinois River; gets out of the watercraft occasionally to walk through shallow water or avoid obstacles; wades in the river; and consumes liquid for hydration and refreshment. Some visitors may include a picnic lunch or other refreshment along the way.

13. A floater first contacts water in the Illinois River at the time he or she wades to the canoe or raft. Floaters are expected to wear a personal floatation device which is usually wet from contact with water during prior uses. Throughout the float trip the recreational floater will be in contact with water in the Illinois River due to leaks in the watercraft and resulting inflow of water; due to horseplay and resulting splashes or capsizing; due to accidental capsizing; and due to deliberate actions to swim in the cooling waters. As a result, any bacteria or other living organisms in the water will be in potential contact with a recreational floater throughout the float experience, from the put-in location to the take-out location.

14. Most floaters then spend several more hours in wet attire either driving home or enjoying additional time in the river corridor. The river waters and life forms remain in contact with the recreational floaters long after the individual has left the actual float experience. Relatively few floaters shower immediately following a recreational float for a variety of reasons, including (1) lack of showers at public access locations, (2) lack of

adequate facilities at properties managed by the private outfitters, and (3) personal choice in hygiene among the floaters.

15. A non-floater recreational experience usually includes a visit to one of the public access locations. The visitor then swims, picnics, sunbathes, and occasionally camps in the river environment. Some of these non-floaters remain camped at a public access location or on an island from Friday through Sunday during the summer. Others visit for several hours on a given day and return to another location at the end of a day. These public access locations do not include shower facilities, and most of the non-floaters practice minimal personal hygiene during their visits to the river.

16. The United States Army Corps of Engineers calculates recreation visits and recreation hours at its properties. Along the Illinois River, only recreation visits are actually calculated for floaters. However, with an average of four hours of direct contact with the water in the Illinois River, the number of recreation hours can be determined.

- For 117,685 floaters, 470,740 recreation hours occur annually.
- For 37,870 non-floaters, a minimum of 151,480 recreation hours occur annually.
- A total of 622,220 recreation hours occur annually in which recreational visitors are in contact with water from the Illinois River and the bacteria and other life forms in that water.

17. Studies, including direct survey and knowledge assessment of recreational visitors to the Illinois River, reveal limited knowledge of the river environment and its ecology. As a result, visitors continue their traditional behavior with little thought for what may be in the water or on their clothes. Consequently, it is common to observe recreational visitors drinking from beverage containers that have been cooling in the river water. It is

common to see visitors eating picnic lunches without any reasonable hygiene. It is common to see visitors leave the river corridor in the same garments in which they were swimming in the Illinois River. Thus, the moisture and the warmth of the post-float experience provide excellent incubation and growth opportunities for bacteria and other life forms contacted by the recreational visitors.

FURTHER AFFIANT SAYETH NOT.

Lowell Caneday

Lowell Caneday, Ph. D.

Subscribed and sworn to me by Lowell Caneday, Ph.D., on the 8th day of November, 2007.

Sherri Longan
Signature

Sherri Longan
Printed Name

Notary Public, State of Oklahoma, County of Payne

My Commission Expires: 5-01-10